

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 593, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO ATTORNEY'S FEES IN SUITS OR ARBITRATION WITH INSURERS; AMENDING SECTION 41-1839, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE AWARD OF ATTORNEY'S FEES IN ACTIONS OR ARBITRATIONS INVOLVING INSURERS AND TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-1839, Idaho Code, be, and the same is hereby amended to read as follows:

41-1839. ALLOWANCE OF ATTORNEY'S FEES IN SUITS AGAINST OR IN ARBITRATION WITH INSURERS. (1) Any insurer issuing any policy, certificate or contract of insurance, surety, guaranty or indemnity of any kind or nature whatsoever, which shall fail for a period of thirty (30) days after proof of loss has been furnished as provided in such policy, certificate or contract, to pay to the person entitled thereto the amount justly due under such policy, certificate or contract, shall in any action thereafter brought against the insurer in any court in this state or in any arbitration for recovery under the terms of the policy, certificate or contract, pay such further amount as the court shall adjudge reasonable as attorney's fees in such action or arbitration.

(2) In any such action or arbitration, if it is alleged that before the commencement thereof, a tender of the full amount justly due was made to the person entitled thereto, and such amount is thereupon deposited in the court, and if the allegation is found to be true, or if it is determined in such action or arbitration that no amount is justly due, then no such attorney's fees may be recovered.

(3) This section shall not apply as to actions under the worker's compensation law ~~which are subject to section 72-611, title 72, Idaho Code.~~ This section shall not apply to actions or arbitrations against surety insurers by creditors of or claimants against a principal and arising out of a surety or guaranty contract issued by the insurer as to such principal, unless such creditors or claimants shall have notified the surety of their claim, in writing, at least sixty (60) days prior to such action or arbitration against the surety. The surety shall be authorized to determine what portion or amount of such claim is justly due the creditor or claimant and payment or tender of the amount so determined by the surety shall not be deemed a volunteer payment and shall not prejudice any right of the surety to indemnification and/or subrogation so long as such determination and payment by the surety be made in good faith. Nor shall this section apply to actions or arbitrations against fidelity insurers by claimants against a principal and arising out of a fidelity contract or policy issued by the insurer as to such principal unless the liability of the principal has been

1 acknowledged by him in writing or otherwise established by judgment of a
2 court of competent jurisdiction.

3 (4) Notwithstanding any other provision of statute to the contrary,
4 this section and section 12-123, Idaho Code, shall provide the exclusive
5 remedy for the award of statutory attorney's fees in all actions or
6 arbitrations between insureds and insurers involving disputes arising under
7 policies of insurance. Provided, attorney's fees may be awarded by the
8 court when it finds, from the facts presented to it that a case was brought,
9 pursued or defended frivolously, unreasonably or without foundation.
10 Section 12-120, Idaho Code, shall not apply to any actions or arbitrations
11 between insureds and insurers involving disputes arising under any policy of
12 insurance.